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In the Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS, ET AL., PETITIONERS

v.

JEROME CROWLEY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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QUESTION PRESENTED

Whether the enforcement scheme created by Title IV of the Labor-Management Reporting and Disclosure Act of 1959 for violations of the Act occurring in the course of a union officer election precludes a court from enjoining the counting of ballots and ordering a new election under court supervision to remedy violations of Title I of the Act that occurred at a nominations meeting.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 41a-93a) is reported at 679 F.2d 978. The opinion of the district court (Pet. App. 1a-40a) is reported at 521 F. Supp. 614.

JURISDICTION

The judgment of the court of appeals (Pet. App. 94a) was entered on May 21, 1982. A petition for rehearing was denied on June 15, 1982 (Pet. App. 95a). The petition for a writ of certiorari was filed

on September 13, 1982, and was granted on January 24, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. 411-412, 481-483, are set out at Pet. App. 96a-103a.

STATEMENT

1. On November 9, 1980, a meeting was held to nominate candidates for the seven-member executive board of petitioner Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers ("Local No. 82"). The election was a controversial one, and several disputes arose in the course of the nominations meeting. One concerned the requirement that members of Local No. 82 show a computerized dues receipt in order to be admitted to the meeting (Pet. App. 43a). The district court found that such a requirement had not been imposed at earlier meetings (*id.* at 19a). Several members, including respondent Jerome Crowley, were denied admission for lack of a receipt (*ibid.*).

The second controversy occurred when nominations were made. Petitioner Bart Griffiths, the incumbent secretary-treasurer of Local No. 82 who was conducting the meeting, was nominated for reelection to that position. The district court found that respondent John Lynch also was nominated for secretary-treasurer, although Griffiths ignored the nomination and announced that he was running unopposed (Pet. App. 21a). Griffiths included Lynch among the candidates for president (*id.* at 44a).

Crowley, Lynch, and others filed a protest concerning the conduct of the nominations meeting with Local No. 82, with Teamsters Joint Council 10, and with the International Union. On November 20, 1980, Local No. 82 denied the protests.[1] Ballots were thereafter mailed to the members (Pet. 4), who were instructed to mark and return the ballots by mail to a designated post office box before 9:00 a.m. on December 13, 1980, when they were to be counted. Respondent Lynch's name appeared on the ballot as a candidate for president, and not for secretary-treasurer (Pet. App. 116a).

2. On December 1, 1980, respondents filed this action in the United States District Court for the District of Massachusetts on behalf of themselves and two classes of members (not certified by the district court) against petitioners Local No. 82, Griffiths, the president of the Local, and members of its election committee. Respondents alleged that petitioners had violated several provisions of Title I of the LMRDA and sought preliminary injunctive relief (Pet. App. 2a-3a, 44a-46a). In particular, respondents claimed that restricting admission to those with dues receipts and the failure to recognize Lynch as a candidate for secretary-treasurer violated their equal rights to nominate candidates and to attend membership meetings, provided by Section 101(a)-(1) of the Act, and their right to meet and assemble freely with other members and to express views upon candidates, provided by Section 101(a)(2) of the Act. 29 U.S.C. 411(a)(1) and (2).[2]

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[1] A hearing before Joint Council 10 was cancelled when this action was filed. No action was taken by the International Union (Pet. App. 15a-16a).

[2] Respondents also made several claims under Titles I and IV concerning increases of local dues and concerning the union

At 4:20 p.m. on December 12, 1980, about 16 hours before the ballots were to be counted, the district court issued a temporary restraining order preventing Local No. 82 from counting the ballots (J.A. 2). Seven months later, on July 13, 1981, the court issued a preliminary injunction declaring that the nominations received at the November 9, 1980 meeting were "legally without effect" and ordering a new nominations meeting and mail ballot election to be conducted and supervised by Lawrence Katz and the Honest Ballot Association of New England ("the arbitrators") (Pet. App. 86a). The injunction set forth in detail the eligibility requirements for attendance at the nominations meeting, candidacy for office, and voting, and directed that disputes about eligibility would be resolved by the arbitrators (*id.* at 87a-91a). It also provided that the arbitrators were to make arrangements consistent with the union's bylaws and constitution for distribution of campaign literature (*id.* at 91a).

3. Petitioners appealed, and the Secretary of Labor intervened in the appeal. They argued that the district court lacked authority to enjoin the tabulation of ballots and order new court-supervised nominations and a new election to remedy Title I violations occurring in the course of the election.[3] Peti-

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rule that only members who have paid their dues on time for the 24 months preceding the nominations meeting may be candidates (Pet. App. 7a-8a). The district court declined for a variety of reasons to grant preliminary relief on these claims (*id.* at 12a, 22a-23a, 25a-37a).

[3] Respondents have suggested, in a Motion To Limit Issues In Writ Of Certiorari And/Or To Dismiss Writ As Improvidently Granted (denied Mar. 21, 1983), that this case does not properly present the issue whether the district court had

tioners and the Secretary contended that under those circumstances the exclusive remedy was the procedure afforded in Title IV of the LMRDA, which provides that a member complaining of election violations must, after exhausting his remedies within the union, file a complaint with the Secretary. 29 U.S.C. 482. If, after investigation, the Secretary finds probable cause to believe that a violation has occurred, he may initiate an action to have the election set aside and a new one conducted "under

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authority to enjoin the union's December, 1980 election. That is so, respondents argued, because on January 9, 1981 the union informed the district court that it was prepared to hold a new nominations meeting and mail ballot election (see J.A. 53, 97, 100). Respondents' point seems to be that since the union, like the district court, was dissatisfied with the conduct of the 1980 election, it suffered no harm when the district court entered a temporary restraining order enjoining the counting of ballots.

Respondents' argument ignores several obvious points. The first is that the Secretary's brief in the court of appeals specifically challenged the propriety of the district court's TRO as an improper interference with the Secretary's enforcement powers under Section 402 (29 U.S.C. 482), and the court of appeals explicitly sustained the district court's power to enjoin the election (Pet. App. 61a, 67a). The second is that the union itself suffered harm under the statute from the TRO even if it was willing to conduct a new election. Section 402(a) of the Act (29 U.S.C. 482(a)) states that a "challenged election shall be presumed valid pending a final decision thereon * * * and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide." This means that, but for the district court's TRO, those elected in the 1980 election (rather than the incumbents) would have conducted the union's affairs until a new election could be held. As we explain in more detail below, pages 29-30, the purpose of Section 402(a) is to preserve as much as possible the union's autonomy in the election process.

supervision of the Secretary" (*ibid.*). Section 403 (29 U.S.C. 483) also provides that "[t]he remedy provided by this subchapter for challenging an election already conducted shall be exclusive." Petitioners and the Secretary argued that to permit court-ordered and supervised elections as a remedy for violations of Title I would frustrate the very purposes underlying Title IV: avoidance of delay in the conduct of elections, resolution of such problems, where possible, by the union itself, screening of frivolous complaints and consolidation of apparently meritorious ones by the Secretary, and reliance on the Secretary's expertise in supervising remedial elections.

The court of appeals affirmed (Pet. App. 41a-85a). The court found no indication in the decisions of this Court that Title IV remedies, including ordering a new election, were intended to displace the relief available to a court in actions under Title I (*id.* at 49a-52a). It also determined that the legislative history of the LMRDA revealed "no evidence that limitations on Title I by Title IV were ever contemplated" (*id.* at 58a-59a). The court found inapplicable the "exclusive remedy" provision in Section 403 since, it concluded, an election is not "already conducted" within the meaning of that section "until all the ballots are counted" (*id.* at 67a)—a situation that, due to the district court's temporary restraining order, was prevented from occurring in this case.[4]

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[4] The court of appeals also rejected claims by petitioners that the preliminary injunction was improper under traditional equitable principles and that the district court had improperly refused to require respondents to post a bond (Pet. App. 68a-82a).

Judge Campbell dissented. He would have held that "the proper accommodation between Title I and Title IV requires consideration not only of the stage which the election process has reached but the nature of the relief" (Pet. App. 83a). Judge Campbell concluded that, if a new supervised election would be required to remedy the asserted election violations, "many concerns argue against finding Title I jurisdiction: intrusiveness, delay, disruption, and the court's lack of expertise in this area, especially as compared to the Secretary" (*ibid.*).

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 403 of the LMRDA (29 U.S.C. 483) allows courts to enforce rights under a union's constitution and bylaws, and under Title I of the Act (see 29 U.S.C. 412), "prior to the conduct" of an officer election. The same section also states that "[t]he remedy provided by [Title IV] for challenging an election already conducted shall be exclusive." While that division of authority between the courts and the Secretary of Labor suffices to resolve many doubts about the proper procedure for seeking redress of rights guaranteed by the Act, it does not clearly address all the kinds of problems that can arise in the course of a mail ballot election. Depending on how one reads the division of authority, there may be a period of weeks from the time immediately "prior to the conduct" of the election to the time when the election is "already conducted." Many violations that can occur during that period will contravene both Titles I and IV of the Act.

The question in this case is what authority a court has, when asked to act under Title I, to remedy such violations. In particular, the issue is whether a

court may remedy Title I violations by enjoining the counting of ballots and ordering a new election under court supervision. We submit that such relief is not "appropriate" (29 U.S.C. 412), because it trenches on the authority of the Secretary under Title IV and on the interests of labor organizations that the scheme for secretarial enforcement was designed to protect.

I.

The legislative history of the LMRDA shows that Congress had little confidence in the ability of courts to remedy Title I violations by ordering and conducting new elections. The Kennedy-Ervin bill that became the Act was introduced in the Senate. It gave the Secretary of Labor exclusive authority to enforce its proposed election guarantees and to supervise any new election that a court might order at the Secretary's behest. As Professor Archibald Cox (a principal consultant to the draftsmen) pointed out during the Senate hearings, such a provision was necessary because "[a] court is * * * a clumsy instrument for supervising an election." *Senate Hearings, infra* page 14, at 133. For that reason state-law remedies that could not be provided in advance of an election were preempted.

The Kennedy-Ervin bill included no bill of rights like that now found in Title I of the Act. It was amended three days before passing the Senate to include a bill of rights enforceable by the Secretary of Labor, who was authorized to seek "appropriate" relief, including injunctions. Two days later the provision for enforcement by the Secretary was itself amended because of a concern that allowing the government to seek injunctions would establish a precedent for federal enforcement of civil rights laws. In-

stead of the Secretary, individual members were authorized to seek "appropriate" relief. There is no indication that the hurried passage of Title I was intended to afford a procedure—parallel to the carefully designed structure in Title IV—for ordering and conducting new union elections under judicial supervision. In fact, Senator Goldwater observed after Title I was added that Title IV's remedial structure would prevent a federal court from appointing its own monitors to supervise a court-ordered election.

The Landrum-Griffin bill introduced in the House simply incorporated without reconsideration the bill of rights passed by the Senate. Title IV of the House bill (which dealt with elections) provided, like Title I, for enforcement by individual members, but specified that new elections were to be supervised by the Secretary. The absence of a similar specification in Title I strongly suggests that a new election was not considered to be "appropriate" relief under that title.

II.

The remedial structure created by Title IV embodies a congressional concern to protect—to the maximum extent possible consistent with individual members' rights—the union's interest in self-government via the election process. When courts order and conduct new elections under Title I they ignore the principle of union autonomy that Congress built into the Act. Title IV requires elections to be held at specified regular intervals. 29 U.S.C. 481(a), (b) and (d). It also provides that any challenged election shall be presumed valid pending a final decision about alleged improprieties. 29 U.S.C. 482(a). A court order directing a new election is immediately appealable, but

to avoid prolonging uncertainty may not be stayed pending appeal. 29 U.S.C. 482(d). To "preserve[] a maximum amount of [union] independence and self-government" (*Senate Hearings*, *infra* page 14, at 134), only the Secretary is authorized to sue for Title IV violations, and members may not seek his assistance before exhausting remedies within the union. 29 U.S.C. 482(a). The Secretary may not sue to upset a union election unless he finds probable cause to believe a violation has occurred (29 U.S.C. 482(b)), and a court may not overturn an election at the Secretary's request unless—after a trial on the merits—it finds that the violation may have affected the outcome of an election. 29 U.S.C. 482(c). Title IV also directs that any new election must be supervised by the Secretary. *Ibid.* Finally, it specifies that "[t]he remedy provided by this [title] for challenging an election already conducted shall be exclusive." 29 U.S.C. 483.

As this case demonstrates, some election violations may contravene both Titles I and IV. In those circumstances, while some kinds of relief under Title I may be appropriate, a new election may be ordered only under Title IV. Any other rule would trench impermissibly on the protection for union self-government built into that title. In this case, ordering a new election under Title I delayed the union's triennial election an entire year beyond the period fixed by statute. 29 U.S.C. 481(b). It also resulted in retaining the incumbents in office a year beyond their term, contrary to the spirit if not the letter of 29 U.S.C. 482(a), which expresses a preference for allowing new officials to take office pending a final decision. By entertaining an action by members the district court also disregarded Title IV's exhaustion

requirement and the Secretary's control over whether to seek a new election (29 U.S.C. 482(a)-(b)), both procedures designed to protect union "independence and self-government." And though the Secretary would himself have sought a new election for a nominations violation like the one alleged here, many Title I violations that a court might try to remedy with a new election may not affect the outcome of an election. 29 U.S.C. 482(c). Directing a new election by preliminary injunction is still another departure from the scheme envisioned by Title IV, which permits a court to order a new election only after a trial on the merits. *Ibid.* Finally, and most obviously, the relief in this case contravenes Congress's direction that new elections should be supervised by the Secretary. *Ibid.*

III.

This Court's decisions have recognized two principles expressed by Congress in the legislative history and embodied in the Act. The first is that the Secretary's expertise must be used in deciding whether to order a new election, and in supervising the conduct of such an election. The second is that in tinkering with the election process courts should preserve the "'maximum amount of independence and self-government'" for unions. *Wirtz* v. *Bottle Blowers Ass'n*, 389 U.S. 463, 472 (1968); *Calhoon* v. *Harvey*, 379 U.S. 134 (1964); *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528 (1972); *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). The action of the district court ignores both those principles.

ARGUMENT

I. THE LEGISLATIVE HISTORY OF THE LMRDA SHOWS THAT CONGRESS THOUGHT COURTS WERE ILL-EQUIPPED TO REMEDY TITLE I VIOLATIONS BY ORDERING NEW ELECTIONS

The legislative history of Title IV of the LMRDA, which was the subject of hearings, careful committee review, and floor debate over two sessions of Congress, demonstrates a considered congressional judgment that courts are poorly suited to order and conduct new elections without the expert assistance of the Secretary of Labor. Though there was little explicit discussion of how Title I's bill of rights (added on the floor three days before the bill passed the Senate) would fit together with that remedial scheme, it is clear from the discussion and the purposes of Title I that it was not intended to displace the central enforcement provisions of the elections title.

A. The Senate Consciously Rejected Judicial Supervision Of Elections In Favor Of Enforcement And Oversight By The Secretary

The original proposal for what eventually became the LMRDA was the Kennedy-Ives bill passed by the Senate in the 85th Congress. S. 3974, 85th Cong., 2d Sess. (1958). Like the Act ultimately adopted, it provided for enforcement of election guarantees by the filing of a post-election complaint with the Secretary of Labor, who would determine after investigation whether to seek a court order for a new election. If a new election was held, it was to be under the supervision of the Secretary. "State laws and State remedies [were specifically excluded] in the election area." S. Rep. No. 1684, 85th Cong., 2d Sess. 13 (1958).

The Kennedy-Ives bill failed to pass the House, and in 1959 the Kennedy-Ervin bill was introduced. S. 505, 86th Cong., 1st Sess. (1959). Like its predecessor, the Kennedy-Ervin bill gave to the Secretary the exclusive remedy for election violations. *Id.* § 303. Its chief rival—the administration bill introduced by Senator Goldwater—would have authorized election enforcement through civil actions filed by union members as well as actions by the Secretary. S. 748, 86th Cong., 1st Sess., § 302(d) (1959). The Senate Committee on Labor and Public Welfare considered these and other bills, and after hearings and executive sessions reported out the Kennedy-Ervin measure as a clean bill renumbered S. 1555, 86th Cong., 1st Sess. (1959). S. 1555 carried forward the ideas that enforcement should be left exclusively to the Secretary and that any new election should be carried out under his supervision. *Id.* §§ 302-303. The Committee Report explained:

> [S]ince the bill provides an effective and expeditious remedy for overthrowing an improperly held election and holding a new election, the Federal remedy is made the sole remedy and private litigation would be precluded.

S. Rep. No. 187, 86th Cong., 1st Sess. 21 (1959).[8]

The bills considered by the committee did not include the bill of rights that later became Title I, so there was no discussion of a possible conflict of remedies between the elections title and the bill of rights.

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[8] The Committee also emphasized that the bill's requirement that members exhaust internal remedies before going to the Secretary "preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." S. Rep. No. 187, *supra*, at 21.

There was, however, extended consideration of how the elections title would mesh with the judicial remedies that existed under state law. Of particular significance are the views expressed by Professor Archibald Cox, "a principal consultant to the draftsmen * * *." *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528, 535 (1972). Professor Cox endorsed the creation of federal standards for officer elections and federal remedies for election violations in large part because of the inadequacy of state law. *Labor-Management Reform Legislation: Hearings on S. 505 et al. Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 86th Cong., 1st Sess. 132-136 (1959) ("*Senate Hearings*"). A major deficiency of common law remedies was the inherent inability of courts to supervise elections (*id.* at 133-134; footnotes omitted):

> A court is also a clumsy instrument for supervising an election. The judicial process may be suitable for determining the validity of an election which has already been held; but if it is found invalid, or if no election has been held, judges have few facilities for providing an effective remedy. Merely to order an election might turn the authority to conduct the balloting over to the very same officers whose misconduct gave rise to the litigation. The court has no tellers, watchers, or similar officials. It would become mired in the details of the electoral process. To appoint a master to supervise the election would delegate the responsibility, but the master would face many of the same problems as the judge. Probably it is the consciousness of these weaknesses that has made judges so reluctant to interfere with union elections, though apparently a few court-conducted elections have been held.

For that reason, among others, Professor Cox supported the exclusivity provision in the Kennedy-Ervin bill—the predecessor of Section 403.[6] Substantively, the exclusivity provision eliminated rivals to the federal elections standards and thereby fulfilled the "need for uniformity" (*Senate Hearings*, *supra*, at 135). But it also addressed the remedial shortcomings Professor Cox had identified. Because a court was such a "clumsy instrument for supervising an election," it was important to "centralize control of the proceedings in the Secretary of Labor" (*ibid.*). The exclusivity provision did that by precluding private suits and channeling elections complaints through the Secretary. And if a court decided at the Secretary's behest "to direct the conduct of an election," it would be "under the supervision of the Secretary and in accordance with * * * such rules and regulations as the Secretary may prescribe." S. 505, *supra*, § 302(b).

Professor Cox did feel that the exclusivity provision was broader than it had to be. If a private suit were filed "in advance of the election" it might be possible to "pre[v]ent the evil before it is accomplished" (*Senate Hearings*, *supra*, at 135). Professor Cox suggested by way of example suits seeking relatively mechanical relief: "actions * * * to compel the officers to comply with provisions of the constitution and bylaws such as putting a candidate's name on the ballot, permitting a classification of members to vote, or giving adequate notice of the elections" (*ibid.*).

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[6] At that time the exclusivity section (S. 505, *supra*, § 303) provided:

> The duties imposed and the rights and remedies provided by this title shall be exclusive, and no labor organization subject to the provisions of this title shall be required to conduct elections of officers with greater frequency or in a different form or manner than is required by this title.

But allowing such actions would not undermine the Secretary's exclusive control over challenges to "the validity of an election" (*Senate Hearings*, *supra*, at 135). In the first place, relief afforded "in advance of the election" need not entail delay and its consequences —such as maintaining the incumbents in office.[7] In the second place, the kind of pin-point relief hypothesized by Professor Cox would not require a court to get "mired in the details of the electoral process" (*id.* at 133-134) or to prescribe rules that might be inappropriate for the customs and circumstances of a particular union.[8] Third, the policing needed for the examples offered would be relatively simple, not involving the "tellers, watchers, or similar officials" (*id.* at 133) required for a supervised election. Finally, pre-election suits would not necessarily frustrate the

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[7] In committing post-election enforcement to the Secretary, Congress faced a "choice * * * between keeping the old officers in office or allowing the new officers to enter upon their duties even though their right may be challenged." S. Rep. No. 187, *supra*, at 22. Congress favored the latter, in part because an "election should be presumed valid until the contrary can be reasonably established" (*ibid.*), in part because "[t]he newly elected officers would be more likely to have the support of the members" and "[t]here would be less disruption of normal procedure within the union." Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 634 (1959).

In this case, the district court's temporary restraining order and injunction resulted in delaying the election, and maintaining the incumbents in office, for an entire year.

[8] In this case, rather than directing that Lynch's name be put on the ballot as a candidate for secretary-treasurer, the district court's order directed the running of an entirely new election under court supervision. It set forth eligibility requirements for attendance at the nominations meeting, candidacy for office, and voting, and directed that disputes about eligibility would be resolved by the arbitrators (Pet. App. 87a-91a).

interest in finality that attached once an election was held (*id.* at 135):

> An election is an integer. Its validity should be adjudicated once and for all in one forum. To permit State court actions would open the way to unnecessary harassment of the union on one side and to friendly suits aimed at foreclosing the Secretary's action on the other.

The court of appeals (Pet. App. 63a), in concluding that the exclusivity provision (now Section 403) did not bar judicially supervised elections in Title I cases, stressed Senator Kennedy's statement that "[p]rior to the day of an election an individual can sue in a State. The day after an election the Secretary of Labor assumes jurisdiction." 105 Cong. Rec. 6485 (1959). But the division of authority drawn by the exclusivity provision, as Professor Cox's testimony makes clear, is functional as well as temporal. The statement in that provision (S. 505, *supra*, at § 303) that the "remedies provided by this title shall be exclusive" rested on the perception that "[a] court is * * * a clumsy instrument for supervising an election." *Senate Hearings*, *supra*, at 133. See also Pet. App. 83a (Campbell, J., dissenting) ("the proper accommodation between Title I and Title IV requires consideration not only of the stage which the election process has reached but the nature of the relief"); Note, *Pre-Election Remedies Under the Landrum-Griffin Act: The "Twilight Zone" Between Election Rights Under Title IV and the Guarantees of Titles I and V*, 74 Colum. L. Rev. 1105, 1124 (1974).

B. The Addition Of Title I On The Senate Floor Did Not Authorize Judicially Supervised Elections

S. 1555 was reported out of committee on April 14, 1959, and debate began on it the next day. On April

22, 1959 Senator McClellan proposed adding a bill of rights that became Title I. 105 Cong. Rec. 6475. Senator McClellan's version, though in many ways broader than the version ultimately included in the Act, did not specifically mention the rights "to nominate candidates," "to attend membership meetings" (29 U.S.C. 411(a)(1)), and "to express any views * * * upon candidates" (29 U.S.C. 411(a)(2)), upon which respondents rely in this case. 105 Cong. Rec. 6475 (1959); see Pet. App. 6a-7a, 22a. Senator McClellan's proposal also vested authority for enforcement of Title I in the Secretary, rather than in individual members. His amendment stated (105 Cong. Rec. 6476 (1959)):

> "SEC. 103. The Secretary, whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, may bring an action in a district court or other court of the United States for such relief as may be appropriate including, but without limitation, injunctions to restrain any such violations and to compel compliance with this title."

The amendment was adopted that same day. 105 Cong. Rec. 6492-6493 (1959). Almost immediately, however, there was strong sentiment for modification. As a substantive matter, objections arose to the absolute terms in which the bill of rights was couched. See Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 858-859 (1960) ("Aaron"); Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 832-833 (1960) ("Cox, *Internal Affairs*"). But there were also strenuous objections to the provision for enforcement by the Secretary of the rights guaranteed. There is no indication that the Senate had changed its mind about the courts'

competence to supervise elections, nor even that it had the election process in mind when it reconsidered the enforcement provisions. Rather, the principal objection to secretarial enforcement by way of injunction was that it would set what some viewed as an undesirable legislative precedent for federal enforcement of civil rights laws. As Senator Johnston of South Carolina stated (105 Cong. Rec. 6696 (1959)):

> This bill gives the Secretary of Labor power to force integration of thousands of union locals and certainly would set an example or a pattern for the Attorney General to follow in school cases throughout the Nation.

See also 105 Cong. Rec. 6485 (remarks of Sen. Carroll), 6486 (remarks of Sen. Kennedy), 6492 (remarks of Sen. Kennedy), 6725 (1959) (remarks of Sen. Goldwater); Aaron, *supra*, 73 Harv. L. Rev. at 859; Cox, *Internal Affairs*, *supra*, 58 Mich. L. Rev. at 833.[9]

As a result of the dissatisfaction with those aspects of the McClellan amendment, two days after it had been introduced and passed Senator Kuchel proposed modifications. 105 Cong. Rec. 6693 (1959).[10]

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[9] Concern was also expressed that permitting the Secretary to intervene in every dispute between members and their unions could prove harmful to union autonomy. See 105 Cong. Rec. 6726 (1959) (remarks of Sen. Kefauver):

> [S]ection 103 * * * would put the Secretary of Labor in the middle of the actions of every labor union in the United States and give him the right to institute suits at his will. It would be very difficult to carry on management-labor relations in the public interest if an unthoughtful Secretary of Labor wished to interfere.

[10] Senator Kuchel made this observation on the rapidity with which the McClellan amendment had been passed (105 Cong. Rec. 6717 (1959)):

One change was to make more specific and limited the rights secured. Instead of guaranteeing open-ended "equal rights and privileges" (*id.* at 6475), for example, the Kuchel amendment secured "equal rights and privileges * * * to nominate candidates, to vote * * *, [and] to attend membership meetings * * *, subject to reasonable rules and regulations in such organization's constitution and bylaws." *Id.* at 6693. With respect to enforcement it provided (*id.* at 6694):

> SEC. 102. Any person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate.

The Kuchel amendment was passed the next day, on April 25, 1959 (*id.* at 6727),[11] as was the Kennedy-Ervin bill (*id.* at 6745).

> The next day, I, like many of my colleagues, read the text of the amendment offered by [Senator McClellan] for which I had voted. It was several pages long. Certainly, with more than 100 printed amendments on our desks, it was physically impossible for any of us to read, let alone to study, the amendments as, one by one, they were offered with rapidity and we were required to vote each one either up or down.
>
> Others of my colleagues on both sides of the aisle did what I did—read and studied the amendments. It became apparent that there were some obvious questions as to parts of the language used. * * * [T]here were provisions which were imperfectly drawn, which should be improved, and changed.

[11] Actually, although the Kuchel amendment was introduced on April 24, 1959, copies of it were not available to members of the Senate until the next day, when it was passed. 105 Cong. Rec. 6717.

A reading of the debates that took place during the expedited consideration of the McClellan and Kuchel amendments substantiates Professor Cox's later statement that "the work was done late at night or in little knots upon the Senate floor. The draftsmanship left much to be desired, perhaps because of the haste and stress, the number of participants, and the priority of tactical acceptability over nicety of expression." Cox, *Internal Affairs*, *supra*, 58 Mich. L. Rev. at 833. Nor did the House compensate for the Senate's haste in its passage of Title I (*ibid.*):

> The draftsman of the Landrum-Griffin bill incorporated the bill of rights passed by the Senate because its sponsors had instructed him not to write any original provisions. The Landrum-Griffin bill was approved upon the House floor without prior consideration in committee. Since there were no differences between the Senate and House bills in this respect, under parliamentary law the conferees were powerless to revise the bill of rights. Thus, these sections never received the careful technical review and clarification which comes from scrutiny by a congressional committee and its legislative staff.

See also H.R. Rep. No. 1147, 86th Cong., 1st Sess. 31 (1959).

It is most unlikely that in the flurry of activity surrounding enactment of Title I Congress meant to undermine its far more deliberate conclusion—expressed in detail in Sections 402 and 403 of the elections title (29 U.S.C. 482 and 483)—that when a court orders an election, it should be at the behest of the Secretary, and under his supervision. It is true, as the court of appeals in this case noted, that "[b]oth houses of Congress displayed extensive sup-

port for individual rights protections that were written into Title I" (Pet. App. 63a). That fact, however true, does not show that Congress authorized the courts to order and supervise elections as a remedy for conduct at nominations meetings that violates both Titles I and IV.

The relation between Titles I and IV in such cases may be discerned from an analysis of Section 402 of the House bill reprinted by Senator Goldwater after Title I was added (105 Cong. Rec. 14273 (1959)):

> *Enforcement of election requirements*
>
> Section 402(a): Before a member can go to court to upset a fraudulent election, this section requires that such member must first pursue internal union remedies for at least 6 months. This section would have operated as a bar to the court action instituted by the 13 teamsters resulting in the appointment by a Federal court of monitors to supervise that union.[12]

The action to which Senator Goldwater referred was filed in 1957 by 13 members of Teamster locals alleging a conspiracy to rig the selection of delegates to a forthcoming national Teamsters convention, disfranchisement of members, interference with freedom of expression at meetings, and similar activities that would apparently have violated both Titles I and IV of the Act passed two years later. *English* v. *Cunningham*, 269 F.2d 517, 519, 533 (D.C. Cir.), cert. denied, 361 U.S. 897, 905 (1959). The district

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[12] As we note below, pages 25-26, the House bill allowed member suits to enforce Title IV rights, though like the Senate bill it permitted new elections only under the supervision of the Secretary.

court ultimately entered a consent decree that allowed those elected to hold office provisionally, pending the conduct of new elections under the supervision of the court, assisted by a board of monitors (*id.* at 520). The court of appeals sustained the action of the district court, though as its numerous opinions on the matter indicate, implementation of the decree proved to be a complex matter.[13]

As the analysis offered by Senator Goldwater indicates, any future action seeking the remedy of a supervised election would—notwithstanding Title I—have to proceed under Title IV, beginning with the procedures for exhaustion and filing with the Secretary to which he referred. Of course, in the Teamsters' case the appointment of monitors was strictly

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[13] See *English* v. *Cunningham*, *supra*, 269 F.2d at 538 (Supplemental Opinion); *Cunningham* v. *English*, 269 F.2d 539 (D.C. Cir. 1959); *Milone* v. *English*, 282 F.2d 828 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 829 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 831 (D.C. Cir. 1960); *Milone* v. *English*, 282 F.2d 832 (D.C. Cir. 1960); *San Soucie* v. *Schmidt*, 282 F.2d 833 (D.C. Cir. 1960); *International Brotherhood of Teamsters* v. *Schmidt*, 282 F.2d 837 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 838 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 839 (D.C. Cir. 1960); *English* v. *Board of Monitors*, 282 F.2d 840 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 841 (D.C. Cir. 196); *Dorsey* v. *Cunningham*, 282 F.2d 842 (D.C. Cir. 1960); *Hoffa* v. *Letts*, 282 F.2d 842 (D.C. Cir. 1960); *English* v. *Cunningham*, 282 F.2d 848 (D.C. Cir. 1960); *Hoffa* v. *Letts*, 284 F.2d 283 (D.C. Cir. 1960).

Justice Frankfurter, in a memorandum denying an application for a stay of the court of appeals' original judgment (269 F.2d 517 (D.C. Cir. 1960)), noted:

> " ' "One thing more does need to be said.
>
> " ' "As is recognized by all concerned, judicial supervision of a union with a membership of 1,500,000 and some

speaking a post-election remedy.[14] But it is difficult to believe that a judicial solution would have been more compatible with the Act if the court had forbidden the election to take place at all, rather than provisionally accepting its results pending a judicially supervised rerun. Rather, the lesson that Congress more likely drew from the case was that "[a] court is * * * a clumsy instrument for supervising an election." *Senate Hearings*, *supra*, at 133. Senator Goldwater's statement plainly suggests, therefore, that a court-ordered and supervised election was not considered an appropriate remedy for a violation of Title I.

> 800 locals through the agency of a mechanism like the Board of Monitors is an unusual manifestation of equity powers. Defendants seek to enlarge the significance of the immediate items in controversy by their anticipation of an expansion of the powers of the Board of Monitors and their resulting fear of disruption of forces within the Teamsters as well as a heavy drain on the Teamsters' treasury in the course of such far-flung judicial administration. These are matters not immediately involved in the decree of the Court of Appeals now before me." ' "

English v. *Cunningham*, 361 U.S. 905, 909 (1959) (memorandum of Frankfurter, J.).

[14] However, Senator Goldwater's statement, if nothing else, disproves the court of appeals' conclusion in this case (Pet. App. 58a-59a) that

> The exclusiveness of the Title IV remedy in certain cases was intended to exist only vis-a-vis state remedies; there is no evidence that limitations on Title I by Title IV were ever contemplated.

Title I had been added to the bill at the time Senator Goldwater made his statement, and Senator Goldwater gave no indication that court-appointed monitors, though unacceptable under state law, were authorized by Title I.

C. The Action Of The House Reemphasizes The Senate's Conclusion That Courts Should Not Supervise Union Elections

As we mentioned above, page 21, the bill of rights provisions in Title I of the Landrum-Griffin bill were simply borrowed from the bill passed by the Senate. See Title I, H.R. 8400, 86th Cong., 1st Sess. (1959). They included a guarantee (*id.* at § 102) that "[a]ny person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate." Similar provisions concerning Title I remedies were included in the mild reform bill sponsored by Representative Shelley of California, which was supported by the labor movement (H.R. 8490, § 102, 86th Cong., 1st Sess. (1959); Cox, *Internal Affairs*, *supra*, 58 Mich. L. Rev. at 822), and in Representative Elliott's bill, which had been reported out by the House Committee on Education and Labor (H.R. 8342, 86th Cong., 1st Sess. § 102 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess. (1959)).

With regard to Title IV's election provisions each of the House bills differed in one important respect from the Kennedy-Ervin bill. Section 402(a) of the Landrum-Griffin bill provided (H.R. 8400, *supra*, § 402(a)):

> A member of a labor organization—
>
> (1) who is aggrieved by any violation of section 401, and
>
> (2) who [has pursued internal union remedies for six months]
>
> may bring a civil action against such labor organization in any district court of the United

> States for the district having jurisdiction of such labor organization to prevent and restrain such violation and for such other relief as may be appropriate, including the holding of a new election under the supervision of the Secretary and in accordance with the provisions of this title.

Identical provisions were included in the Shelley bill (H.R. 8490, *supra*, § 402(a)) and the Elliott bill (H.R. 8342, *supra*, § 402(a)). The idea behind permitting members, rather than the Secretary, to initiate Title IV suits may have been that "the losing faction in an election could conduct its contest more expeditiously by hiring aggressive local counsel than by undertaking a trek to Washington * * *." H.R. Rep. No. 741, *supra*, at 79 (Supplementary Views on H.R. 8342).

What is significant, though, is that each of the three bills seriously considered by the House provided for secretarial supervision of court-ordered elections *even in actions filed by union members.* That requirement undoubtedly derived from a feeling that whatever advantages private enforcement might have, a court would still be poorly equipped to conduct an election. Moreover, the absence of a similar provision for secretarial supervision in the enforcement sections of Title I (H.R. 8342, *supra*, § 102; H.R. 8400, *supra*, § 102; H.R. 8490, *supra*, § 102) is a strong indication that the House did not consider court-ordered elections to be "appropriate" relief for Title I violations.[16]

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[16] The provision for member suits to enforce Title IV election rights in the Landrum-Griffin bill was deleted in conference, and the Kennedy-Ervin provision for secretarial enforcement was substituted. H.R. Rep. No. 1147, 86th Cong., 1st

II. THE TERMS OF THE ACT SHOW THAT CONGRESS, OUT OF CONCERN FOR UNION SELF-GOVERNMENT, INTENDED TO PRECLUDE COURTS FROM ORDERING AND SUPERVISING ELECTIONS TO REMEDY TITLE I VIOLATIONS

The legislative history of the LMRDA makes clear that Congress had little confidence in the courts' ability to conduct union elections. The language of the Act demonstrates Congress's correlative conviction that the election process was crucial to union self-government. Although Title I, and especially Title IV, were intended to make unions more democratic, both titles also respect the link between elections and self-government. Title I guarantees a broad spectrum of rights to ensure the individual member's participation in his union's affairs, but limits available remedies to those that are "appropriate." Title IV shows a concern that elections be regular and periodic, and not easily overturned. When it is necessary to interfere in the election process, Title IV installs the Secretary as a buffer, and also commits to him the supervision of any court-ordered election. Though a court may afford some relief on its own

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Sess. 35 (1959). The conference report does not explain the reason why the House receded. It was no doubt felt, however, as Senator Goldwater said in comparing the House and Senate versions (105 Cong. Rec. 16489 (1959)), that

> the Senate bill is substantively preferable in its reliance on Government, rather than exclusively individual, enforcement action. Since the election standards are designed to insure honest elections for the benefit of all union members as a matter of public policy, their violation is a matter of public rather than exclusively individual concern, and should be enforcible in the same way as the trusteeship standards of the bill.

"prior to the conduct" of an election, Title IV's remedies are otherwise exclusive. When a court orders a new judicially supervised election as the district court did here, it not only undertakes a task for which it is ill-equipped, but also ignores the Act's structural protection of union self-government.

Title I of the LMRDA is a bill of rights, only some of which are directly relevant to officer elections. It assures members equal rights "to nominate candidates, to vote in elections [for choosing officers and for other purposes] * * *, [and] to attend membership meetings"—including those at which elections occur—"subject to reasonable rules and regulations" set by the union. 29 U.S.C. 411(a)(1). It also guarantees each member the freedom "to express * * * his views[] upon candidates in an election" (29 U.S.C. 411(a)(2)). But the right to participate in union affairs and the freedoms of speech and assembly have numerous other applications. And Title I also deals with the rights to sue and to appear as a witness or communicate with the legislature, the right to specified procedures for increasing dues or imposing other assessments, and the right to notice and a fair hearing if the union seeks to impose any form of discipline. 29 U.S.C. 411(a)(3)-(5). Title I states in addition that if the various rights it secures are infringed, an individual member may sue in federal district court "for such relief (including injunctions) as may be appropriate." 29 U.S.C. 412.

Title IV, by contrast, is entitled "Elections" and is exclusively concerned with the election process. Like Title I it guarantees a number of individual rights, though here they are both more specific and more unqualified. An opportunity must be provided

for the nomination of candidates. Every member in good standing is declared eligible (subject to uniform and reasonable qualifications) to be a candidate; each is given the right to vote or otherwise support the candidate of his choice, and to 15 days' notice of the election. Votes are to be weighted equally, and members whose dues are withheld by an employer cannot be disqualified for nonpayment of dues. 29 U.S.C. 481(e). Candidates are entitled to the union's assistance in distributing campaign literature and are given the rights to inspect membership lists and to have observers at the polls and at the counting of the ballots. 29 U.S.C. 481(c). These rights encompass the kinds of claims made by respondents in this case: the opportunity to nominate candidates, the right to be a candidate, and the right to support the candidate of one's choice. See, *e.g.*, *Wirtz* v. *National Maritime Union of America*, 399 F.2d 544, 548-549 (2d Cir. 1968).

In addition to protecting those individual rights, however, Title IV includes structural provisions designed to assure that unions—through their elections—remain *self*-governing organizations. Elections must be held at regular intervals—in the case of a local like petitioner "not less often than once every three years by secret ballot among the members in good standing." 29 U.S.C. 481(b). See also 29 U.S.C. 481(a) and (d). The regularity of that process cannot be automatically upset by election challenges. Rather, a "challenged election shall be presumed valid pending a final decision thereon" (29 U.S.C. 482(a)). The thought was that

> union business must not be brought to a standstill whenever an election is challenged * * *. The choice lies between keeping the old officers

> in office and allowing the new officers to govern even though their right is challenged. The latter course appears preferable for several reasons. A union election should be presumed valid until the contrary appears. The newly elected officers would be more likely to have the support of the members. There would be less disruption of normal procedure within the union.

Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 634 (1959) ("Cox, *The Role of Law*"). Moreover, an order directing the conduct of a new election is immediately appealable, though to avoid prolonging any uncertainty such orders may not be stayed pending appeal. 29 U.S.C. 482(d).

There are still other hurdles, both procedural and substantive, that prevent courts from upsetting the regular election process. Members may not file their own suits to correct Title IV violations,[16] but can only ask the Secretary to do so—and then only after exhausting internal remedies, or at least pursuing them for three months. 29 U.S.C. 482(a). As Professor Cox testified concerning this requirement, it "preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." *Senate Hearings*, *supra*, at 134. The Secretary, in turn, will bring an action only "if he finds probable cause to believe that a violation * * * has occurred and has not been remedied" (29 U.S.C. 482(b)). See S. Rep. No. 187, *supra*, at 21 ("an election is not to be set aside for technical violations"). Even then,

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[16] An exception to this general rule is provided for enforcing the right to distribution of campaign literature. 29 U.S.C. 481(c).

the court may not "declare the election * * * to be void and direct the conduct of a new election" unless "after a trial upon the merits" [17] it finds that the violation "may have affected the outcome of an election" (29 U.S.C. 482(c)). See *Wirtz* v. *Hotel Employees*, 391 U.S. 492, 505-509 (1968).

Title IV also responds directly to Congress's concern that courts are ill suited to conduct elections. It states that any new election must be "under supervision of the Secretary" (29 U.S.C. 482(c)). Once the election has been held the Secretary "certif[ies] to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization" (*ibid.*).

Congress not only prescribed detailed procedures to administer the remedy it selected for Title IV violations, but also restricted the availability of other remedies for election violations. Section 403 (29 U.S.C. 483) provides:

> No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this [title]. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this

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[17] The requirement that the court make its findings only after a trial on the merits, though it does not preclude the granting of summary judgment, see *Brennan* v. *Local No. 639*, 494 F.2d 1092, 1094-1098 (D.C. Cir. 1974), obviously forbids preliminary injunctive relief invalidating an election.

> [title]. The remedy provided by this [title] for challenging an election already conducted shall be exclusive.

The first sentence of Section 403 means that the union constitution and bylaws govern officer elections so long as they conform to Title IV; any other law purporting to impose different requirements is preempted. In the second sentence Congress preserved some existing rights and remedies—those to enforce the constitution and by-laws—so long as they are invoked prior to the conduct of an election. The third sentence declares that when an election is already conducted, *all* "remed[ies] * * * for challenging an election" other than Title IV proceedings are foreclosed, even those that merely seek to correct violations that took place "prior to the conduct" of the election.

As this case demonstrates, some conduct that violates Title IV may also violate Title I. To recognize that is not to acknowledge, however, that a court-ordered and supervised election is an appropriate remedy for such a Title I violation. As we have shown, Title IV prescribes a remedy for election violations that is carefully designed to interfere as little as possible with union self-government. Title I, by contrast, merely authorizes a court to redress violations of the various rights provided in that portion of the statute by affording "such relief (including injunctions) as may be appropriate." 29 U.S.C. 412. But as this Court has frequently emphasized, a statute must be read as a whole, giving effect to all its parts. *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633-634 (1973); *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 307-308 (1961).

The very use of the term "appropriate" in Title I suggests that certain remedies are inappropriate. The scope of the "appropriate" remedy under Title I must be defined with an awareness of the important end served by the more specific procedures in Title IV. The district court's action in this case chips away at the protection for union self-government given by Title IV in numerous ways. For example, although Section 401(b) (29 U.S.C. 481(b)) guarantees local elections every three years, the temporary restraining order and preliminary injunction issued here delayed the Local's triennial election an entire year beyond its appointed time. And although Section 402(a) (29 U.S.C. 482(a)) directs that newly elected officers should assume office even though their right is challenged—since they "would be more likely to have the support of the members" than the incumbents (Cox, *The Role of Law*, *supra*, 72 Harv. L. Rev. at 634)—the court's intervention made that impossible. New elections under Title I may also conflict with the direction of Section 402(c) (29 U.S.C. 482(c)) that the regular election process not be upset to remedy violations that could not have affected the outcome. Although refusal to recognize a nomination would be cause for ordering a new election under Title IV, see *Wirtz* v. *Hotel Employees*, *supra*, 391 U.S. at 507, the same may not be true of all election-related misconduct that a court might seek to redress by ordering a new election under Title I.

A fourth way in which self-government would be promoted under Title IV concerns the exhaustion of intra-union remedies. Section 402(a) (29 U.S.C. 482(a)) makes exhaustion a prerequisite to filing a complaint with the Secretary under Title IV. By

contrast, although exhaustion of Title I claims may be demanded by the union, 29 U.S.C. 411(a)(4), this Court has held that the necessity of complying is a matter left to the discretion of the district court. *NLRB* v. *Marine Workers*, 391 U.S. 418, 426-428 (1968). In this case, a hearing to review the conduct of the nominations meeting, undertaken by Teamsters Joint Council 10, was cancelled when this action was filed (Pet. App. 15a-16a). Still another difference may be found in Title IV's requirement that a court may not order a new election except "after a trial upon the merits" (29 U.S.C. 482(c)). Because no similar limitation is found in Title I, courts may upset the regular election process more freely—as the district court did here—on the basis of the necessarily less certain evidence offered in support of a motion for a preliminary injunction.

Yet another divergence from Title IV's procedures, and one of more intimate concern to Congress, is that judicial elections under Title I take place without the Secretary's supervision. 29 U.S.C. 482(c). But a "court has no tellers, watchers, or similar officials. It would become mired in the details of the electoral process. To appoint a master to supervise the election would delegate the responsibility, but the master would face many of the same problems as the judge." *Senate Hearings*, *supra*, at 133-134. Ultimately, there is no substitute for the expertise the Secretary has acquired, and the resources he can bring to the task. As this Court emphasized in *Calhoon* v. *Harvey*, 379 U.S. 134, 140 (1964):

> Reliance on the discretion of the Secretary is in harmony with the general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that

fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before the resort to the courts.

Those many departures from the detailed scheme created by Title IV emphasize the point made in the "exclusive remedy" provision, Section 403 (29 U.S.C. 483). One might wish that Congress had spoken with more precision in the second and third sentences, whose language (about remedies "prior to the conduct" of an election, and remedies "for challenging an election already conducted") does not apply neatly to mail ballot elections. But it is clear that this case has escaped an unequivocal clash with Section 403 only because the district court issued a temporary restraining order less than 17 hours before the ballots were to have been counted. The sensitive remedial process created in Title IV should not be bypassed on the basis of such hasty judicial action.

III. THIS COURT'S DECISIONS HAVE RECOGNIZED THAT THE PURPOSES OF THE ACT WOULD BE FRUSTRATED IF COURTS WERE PERMITTED TO REMEDY TITLE I VIOLATIONS BY ORDERING AND SUPERVISING ELECTIONS

Although this Court has not until now been required to reconcile the remedies provided under Titles I and IV of the Act, its prior decisions have frequently acknowledged the two relevant principles that emerge with such clarity from the legislative history and the terms of the Act. The first is that the Secretary has an expertise, which the courts lack, in overseeing union elections. The second is that unions should be—to the maximum extent pos-

sible consistent with protecting individual members' rights—self-governing institutions. From those two principles flow a number of subsidiary objectives that this Court has also found in the Act: centralizing litigation about election violations in the Secretary's hands, insulating unions from insubstantial complaints and from litigation on multiple fronts, and avoiding the delay created by protracted litigation over elections. By taking control of the election process the district court ignored those principles and objectives.

1. In *Calhoon* v. *Harvey, supra*, this Court rejected an attempt by union members to enjoin an upcoming election because of alleged violations of Title I. The plaintiffs there claimed that restrictions on who was eligible to be a candidate, in combination with a rule permitting only self-nominations, violated their Title I right "to nominate candidates." Relying in part on the express language of Section 101(a)(1) (29 U.S.C. 411(a)(1)), the Court held that Title I protects only the "equal" right to nominate and thus was not violated by the union's rule absent a claim of discriminatory application.

Assuming the rule may have violated Title IV, the Court went on to stress the undesirability of correcting such violations by pre-election actions for injunctive relief. The Court noted that Congress had consciously chosen, with regard to union elections,

> to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest. In so doing Congress * * * decided not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV. Reliance on the discretion of the Secretary is in harmony with the

> general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.

379 U.S. at 140 (citation and footnote omitted).

Those views were reaffirmed in *Wirtz* v. *Glass Bottle Blowers Ass'n*, 389 U.S. 463 (1968), which held that an intervening regularly scheduled election does not moot the Secretary's action for a remedial election under Title IV. That conclusion, the Court found, necessarily followed from both of the principles discussed above. In the first place, Congress's desire "to preserve a 'maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections' " (389 U.S. at 472-473, quoting S. Rep. No. 187, *supra*, at 21) meant that a final decision in court would often be overtaken by a subsequent election.[18] It would be ironic if Congress's very devotion to the goal of union self-government should have the effect of excusing a union that was unable to clean its own house before the next election. Moreover, once a violation had been shown, there was no substitute for "the protective

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[18] Other decisions as well have recognized the policy behind the exhaustion requirement. *Wirtz* v. *Laborers' Union*, 389 U.S. 477, 484 (1968) ("the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government"); *Hodgson* v. *Steelworkers*, 403 U.S. 333, 339 (1971) ("Congress intended to foster a situation in which the unions themselves could remedy as many election violations as possible without the Government's ever becoming involved").

presence of a neutral Secretary of Labor [to] prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election." 389 U.S. at 474.

The same emphasis on union self-government and the importance of the Secretary's role shaped the decision in *Trbovich* v. *United Mine Workers of America, supra.* The Court there held that a member complaining under Title IV could be allowed to intervene in an action brought by the Secretary, though he would not be permitted to raise points rejected by the Secretary for setting aside an election. The Court found that the Act carried out Congress's "interest in minimizing judicial interference with union elections." 404 U.S. at 533. To that end (*id.* at 532):

> Congress made suit by the Secretary the exclusive post-election remedy for two principal reasons: (1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted with respect to a single election.

Allowing member intervention would frustrate neither of those objectives. On the other hand, permitting the intervenor to raise new issues would "circumvent the screening function assigned by statute to the Secretary." 404 U.S. at 537.

Finally, the Court once again emphasized the "special knowledge and discretion of the Secretary" and the disruptive effect of delay on union self-government in severely restricting judicial review of the Secretary's decision not to bring suit under Title IV. *Dunlop* v. *Bachowski*, 421 U.S. 560, 571, 573 (1975). In the course of its decision, the Court noted (*id.* at 566):

Certain LMRDA provisions concerning pre-election conduct, 29 U.S.C. §§ 411-413 and 481(c), are enforceable in suits brought by individual union members. Provisions concerning the conduct of the election itself, however, may be enforced only according to the post-election procedures specified in 29 U.S.C. § 482.

2. A district court order that delays a scheduled election for an entire year, and then directs the conduct of a new election under court supervision, frustrates all of those principles and objectives. As we have already noted at some length, it dispenses entirely with the Secretary's expertise and resources for supervising new elections. See pages 17, 30, 34-35, *supra*. That process requires a court to make decisions about the date of the election; the time and method of giving notice; eligibility requirements for attendance at the nominations meeting, for making nominations, and for running for office; distribution of campaign literature; the method of casting ballots and the procedure for overseeing the tally; and a number of other details. See Pet. App. 86a-93a. It may also necessitate numerous decisions on contested claims of eligibility, which will turn not only on factual questions, but also on the interpretation of the union's constitution and bylaws, customs and practices (*id.* at 89a-91a).

By entertaining election challenges under Title I a court not only sacrifices the Secretary's expertise in *supervising* elections, but also foregoes the benefit of the Secretary's decision about *whether to seek* the conduct of a new election. As this Court emphasized in *Dunlop* v. *Bachowski*, *supra*, 421 U.S. at 571, Congress in Title IV expressed its view that the Secretary was better able to make that decision than a court:

> [S]ince the statute relies upon the special knowledge and discretion of the Secretary for the determination of both the probable violation and the probable effect, clearly the reviewing court is not authorized to substitute its judgment for the decision of the Secretary not to bring suit * * *.

Moreover, the Secretary's authority to seek correction of violations is less confined than that of a court acting simply on a member's Title I complaint. Some election violations will be unlawful only under Title IV, and therefore not remediable by a court acting under Title I. See *Calhoon* v. *Harvey*, *supra*. In this case, for example, the district court dismissed one of respondent's claims—that the union's rule conditioning eligibility on timely payment of dues was an unreasonable qualification (Pet. App. 7a-8a, 12a-13a)—because the facts alleged stated a violation only of Title IV.

The district court's direction of a new election under Title I not only ignores the statutory role of the Secretary, but also interferes to an impermissible degree with the principle of union self-government embodied in the Act. As we have already noted (page 30, *supra*), "the exhaustion requirement [in Title IV] was regarded by Congress as critical to the statute's objective of fostering union self-government." *Wirtz* v. *Laborers' Union*, 389 U.S. 477, 484 (1968). That objective is ill-served by applying the more relaxed exhaustion requirements of Title I (see pages 33-34, *supra*) to requests for a new election. The same principles of union autonomy persuaded Congress "not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV." *Calhoon* v. *Harvey*, *supra*, 379 U.S. at 140. But again, as we have already noted,

court intervention in this case resulted in delaying a union election for an entire year beyond the three-year maximum fixed by Title IV (29 U.S.C. 481(b)), and retaining in office incumbents whose claim on the members' allegiance may be weaker than that of the 1980 election winners, whatever the defects of that election may have been.

The principle of union autonomy is also seriously compromised when a court ignores the Secretary's ability "to centralize in a single proceeding such litigation as might be warranted with respect to a single election." *Trbovich* v. *United Mine Workers of America*, *supra*, 404 U.S. at 532. As Professor Cox noted during the Senate hearings, "An election is an integer. Its validity should be adjudicated once and for all in one forum." *Senate Hearings*, *supra*, at 135. That purpose is served by Title IV because all the reins are collected in the Secretary's hands. But there is no limit to the number of Title I actions that may be filed to challenge the election process. And the venue provision in Section 102 permits such suits to be filed "where the alleged violation occurred, or where the principal office of such labor organization is located" (29 U.S.C. 412). It is thus conceivable that several suits requesting a remedial election could proceed in different courts at the same time, and come to different conclusions about whether or how to conduct a new election. Cf. *Carter* v. *Civil Service Employees Association*, No. CV-80-0832 (E.D.N.Y., filed Mar. 26, 1982) (Title I); *Donovan* v. *Civil Service Employees Ass'n*, No. 83-CV-108 (N.D.N.Y., filed Jan. 31, 1983) (Title IV). That possibility alone makes it unlikely that the "appropriate" relief authorized by Section 102 for Title I violations was intended to include court-ordered elections.

3. The reasons advanced by the court of appeals to justify judicially ordered and supervised elections under Title I will not withstand careful examination. The court suggested that "[t]he rights protected by Title I, particularly equal rights to participate in union elections, free speech, and due process, * * * are in the nature of rights traditionally protected by federal courts" (Pet. App. 59a). However true that may be as an abstract matter, it is also true that the rights asserted here—to nominate, to run for office, to vote—are precisely the kinds of rights guaranteed by Title IV. 29 U.S.C. 481(e). And Congress in Title IV

> relie[d] upon the special knowledge and discretion of the Secretary for the determination of both the probable violation and the probable effect * * *.

Dunlop v. *Bachowski*, *supra*, 421 U.S. at 571. More important, whatever the nature of the rights a member seeks to enforce, there is an undeniable difference in the respective competencies of the courts and the Secretary to conduct a supervised election as a remedy. And what is at issue in this case is simply the propriety under the Act of a district court (acting as a court of equity) affording immediate pre-election injunctive relief, rather than waiting 17 hours to follow the remedial structure prescribed by Title IV. Congress's clearly expressed desire to utilize the special competence of the Secretary, and to respect to the maximum extent possible the union's autonomy, leaves no uncertainty about the answer to that question.

The court of appeals also suggested that "suits involving Title I rights will produce individual fact patterns, and, even if several suits are brought, conflicting or redundant rulings are not likely to emerge,

and unions will not be burdened unfairly by litigation" (Pet. App. 59a-60a). There is little support for that claim apart from the court's ipse dixit. LMRDA election violations will always involve "individual fact patterns," because rights are inherently individual claims. Title IV's guarantees concerning the opportunity to nominate candidates, the right to run for office, the right to vote, the right to pre-election notice, the right to have one's vote counted equally, and the right of one whose dues are withheld by an employer not to be declared ineligible (29 U.S.C. 481(e)) all protect individuals. Yet Congress directed that they should be enforced only by the Secretary, because the Title IV remedy for individual violations—a new election—affects the entire union. The same is true when a court orders a new election to remedy Title I violations. If "several suits are brought, conflicting or redundant rulings" (Pet. App. 59a) about whether and how to conduct a new election may well emerge, and the effect on the collective interest in union self-government could well be chaotic.

In finding that its action was not foreclosed by the exclusivity provision in Section 403 (29 U.S.C. 483), the court of appeals concluded that "flagrant violations [of Title I] may go unremedied" if courts are precluded from acting on complaints during the election process (Pet. App. 65a). That conclusion both exaggerates the problem and ignores the explicit language of the Act. Section 403 does say that "[t]he remedy provided by [Title IV] for challenging an election already conducted shall be exclusive." And when that point is reached,[19] a Title I claim that

[19] The Secretary believes, contrary to the court of appeals, that that point is reached no later than when the tally of the

amounts to an election challenge may not be entertained by a court.[20] But relief is still available for the same conduct under Title IV. And up to the point when an election is "already conducted" Section 403 explicitly preserves "[e]xisting rights and remedies to enforce the constitution and bylaws," and implicitly permits Title I actions for "appropriate" relief (see 29 U.S.C. 412). Such relief would include actions for damages. It would also encompass equitable remedies that did not result in delay or judicial supervision of the election process. See Note, *Union Elections and the LMRDA: Thirteen Years of Use and Abuse*, 81 Yale L.J. 407, 558-559 (1972); Comment, *Titles I & IV of the LMRDA: A Resolution of the Conflict of Remedies*, 42 U. Chi. L. Rev. 166, 179 (1974); James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 Harv. C.R.-C.L. L. Rev. 247, 316-317

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ballots is begun. Cutting off all individual challenges at that point prevents candidates who may be losing from using the courts to sandbag the election. More important, the Secretary's post-election action will be free from interference by individual members' suits.

There have been cases that have erroneously granted Title I relief after the election was over. See, *e.g.*, *Kupau* v. *Yamamoto*, 622 F.2d 449 (9th Cir. 1980); *Kraska* v. *United Mine Workers of America*, 686 F.2d 202 (3d Cir. 1982). Even in those cases, however, the relief granted was the installation in office of the winning candidates, not the conduct of a new election.

[20] That does not necessarily mean that all post-election Title I claims are precluded. For example, discriminatory denial of a vote to one member that did not affect the outcome of an election would not be remediable under Title IV. In that case the claim is not that the election is invalid, but that an individual's right has been violated, and a Title I suit for damages may be appropriate.

(1978).[21] But the "appropriate" relief contemplated by Title I does not include an injunction that delays for an entire year a union's regularly scheduled election and that directs the conduct of a new election under the supervision of a court, unassisted by the Secretary.

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[21] Respondents have suggested, without supporting argument, that "this action will be wholly moot before this Court is likely to decide the merits" of the case (Br. in Opp. 25). That suggestion is without merit. The district court has impounded and still holds the ballots for the 1980 election, which it enjoined, and the term of the offices voted on in that election has not yet expired. It is true that the next regularly scheduled election will occur before the end of 1983, and we are informed that the officers chosen at that election will be installed by the beginning of 1984. But as this Court held in *Wirtz* v. *Bottle Blowers' Ass'n*, *supra*, 389 U.S. at 468-476, the intervention of a regularly scheduled election does not cut off the Secretary's right to exercise his statutory authority with regard to the preceding election.

More important, the underlying order being reviewed here is only a preliminary injunction. The district court has retained jurisdiction over the case, and as the court of appeals noted, "the district court did * * * not regard [the preliminary injunction] as the final order in this case" (Pet. App. 76a). In papers recently filed with the district court respondents suggested that further action by the court might be "necessary to guarantee fair and open elections in the union" even after the 1983 election. Unless "the Defendant Griffiths is replaced in that election," respondents suggested that they might have "reason to believe [that] further injunctive relief is necessary * * *." Plaintiffs' Supplemental Memorandum In Support Of Their Modified Motion For An Award Of Attorneys Fees 4. (We have lodged a copy of the Memorandum, along with a Proposed Contempt Judgment And Order for violation of the preliminary injunction, with the Clerk of this Court.)

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded with instructions to vacate the preliminary injunction and return the ballots to the custody of petitioners.

Respectfully submitted.

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